



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
WESTCHESTER REGIONAL OFFICE

August 9, 2023

(914) 422-8845

The Honorable Cathy Seibel  
Charles L. Brieant, Jr. Federal Building and U.S. Courthouse  
300 Quarropas Street  
White Plains NY 10601

These discovery issues will be discussed at the  
in-person conference on 08/21/2023 at 11:30  
a.m.

Re: Girard v. Gutwein  
20 CV 5883

SO ORDERED.

8/16/23

*Cathy Seibel*  
CATHY SEIBEL, U.S.D.J.

Dear Judge Seibel:

I write in response to Plaintiff's letter dated August 7, 2023, which requested a stay of the discovery deadline to address what Plaintiff's asserts are outstanding discovery issues. I believe that Defendants have fully responded to Plaintiff's discovery and furthermore, some of the issues raised by Plaintiff were already resolved in a prior discovery conference with the Court.

- 1) **Disciplinary Hearing Tapes:** After motion practice, the Court allowed Plaintiff to proceed with a sole Due Process violation based on Defendant Gutwein denying Plaintiff's request at the disciplinary hearing for video of two areas in the facility (SHU and the Mental Health Unit), which Plaintiff argued would show the extent of his injuries. Defendants' initial Rule 26 disclosures – which was provided to Plaintiff almost a year ago on August 11, 2022 – included a copy of the disciplinary hearing transcripts. Despite having the hearing transcripts for almost a year, Plaintiff now claims that the transcripts contains omissions. Plaintiff submitted a discovery request seeking the audio tapes of that hearing and Defendant has responded that the tapes no longer exist. Thus, Defendant has not refused to provide responsive documents – the tapes no longer exist. Plaintiff then demands that Defendants provided an affidavit detailing the destruction of the tapes. Plaintiff, however, has failed to provide any information as to how the hearing tape transcripts are deficient as to the lone Due Process issue in this case, and has failed to explain how such an affidavit would be relevant to resolving Plaintiff's claim.
- 2) **Interrogatories:** Initially, Plaintiff alleges that Defendants failed to adequately respond to Interrogatory 3, which demanded the identity of the medical staff who provided treatment to plaintiff after the incident. Defendants responded to this Interrogatory with a demand for a HIPPA release. On June 9, 2023, Defendants

provided Plaintiff with a complete copy of his medical records, in response to this Interrogatory. Defendants approach was consistent with the Court's directives (See, Dkt. # 105 (Transcript of Court Conference on May 19, 2023, p. 29 – 30, attached hereto as Exhibit A, discussing that records would be sufficient as responses to the Interrogatories). Plaintiff now claims that he cannot verify the identity of the medical providers from the documentation contained in his own medical records and asserts that Defendants – who were all security staff at Green Haven Correctional Facility – somehow have knowledge of the identity of Plaintiff's medical providers. None of the Defendant, however, were involved with providing medical care to Plaintiff or have independent knowledge regarding any treatment he received. Accordingly, none of the Defendants would be able to provide any information regarding medical treatment, apart from what is contained in the medical records.

Plaintiff also seeks further information from Defendant Blot in response to Interrogatory Five regarding any civil matters in which Defendant Blot testified. Foremost, at the prior discovery conference, the Court ruled that this Interrogatory was overbroad, and further ruled As noted by Plaintiff, Defendant Blot was subject to a deposition where he acknowledged that he may have provided a previous deposition in another civil case. Defendant's Blot deposition contains all of the information that he could recall regarding other civil litigation – his response this Interrogatory would be no different than his deposition responses. Therefore, to the extent an Interrogatory amendment is needed, Defendants refer Plaintiff to Defendant Blot's deposition transcript..

Last, Plaintiff demands that each defendant verify the interrogatories. Foremost, each of the Defendants have provided a sworn deposition in this case, wherein Plaintiff's counsel inquired about the allegations contained in the Complaint and all other relevant areas regarding this case. Thus, Plaintiff already has already obtained sworn statements from each Defendant regarding the various topics in the Interrogatories. The Court has already ruled that providing additional responses to the Interrogatories would be "busy work" where the referenced documents contain the requested information. (Ex. A, p. 29 – 30.) On the eve of discovery closing, demanding information duplicative to the sworn statement contained in the depositions seems simply like busy work, that provides no additional information to Plaintiff.

Very truly yours,

**Rachel Zaffrann**

Rachel Zaffrann

Deputy Assistant Attorney General



# **Exhibit A**

## **Discovery Conference Transcript**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 CHAUNCEY T. GIRARD,

5 Plaintiff,

6 -vs- 20 CV 5883(CS)

7 DISCOVERY CONFERENCE

8 COMMISSIONER ERIC GUTWEIN, et al.,

9 Defendants.

10 -----x

11 United States Courthouse  
12 White Plains, New York

13 May 19, 2023

14 Before: THE HONORABLE CATHY SEIBEL, District Judge

15 A P P E A R A N C E S:

16 RICKNER PLLC

17 Attorneys for Plaintiff  
18 14 Wall Street  
19 Suite 1603  
20 New York, New York 10005

21 BY: STEPHANIE PANOUSIERIS

22 NEW YORK ATTORNEY GENERAL'S OFFICE

23 Attorneys for Defendants  
24 44 South Broadway  
25 Fifth Floor  
White Plains, New York 10601

BY: RACHEL C. ZAFFRANN

1 THE DEPUTY CLERK: The Honorable Cathy Seibel  
2 presiding. Girard v. Gutwein.

3 THE COURT: Good morning, Ms. Panousieris?

4 MS. PANOUSIERIS: Perfect. Thank you, Your Honor.

5 THE COURT: I had a little pronunciation help from  
6 Mr. Clark. And, Ms. Zaffrann. You can both have a seat.

7 MS. ZAFFRANN: Good morning, Your Honor.

8 THE COURT: All right. We have discovery issues.

9 MS. PANOUSIERIS: Yes, Your Honor.

10 THE COURT: Let's go through them in order. First is  
11 document request number eight: All grievances, PREA reports,  
12 311 calls, or other reports or complaints made by any inmate  
13 against any individual defendant for five years prior to the  
14 incident regarding excessive force.

15 Is it still your position that there aren't any?

16 MS. ZAFFRANN: Your Honor, I did present these  
17 requests to the agency and to Green Haven, and that is the  
18 response I got. I can, if Your Honor would like, inquire again  
19 of the agency, but --

20 THE COURT: I will tell you my concern. I know the  
21 name "Michael Blot" because he gets sued a lot, and if you go to  
22 Westlaw, and you put in his name -- now maybe there's two  
23 because I know sometimes fathers and sons become COs -- but if  
24 you put in Michael Blot, he's been sued five or six times for  
25 excessive force. So anybody who told you that there weren't any

1 | didn't do his or her job. And to be honest, if either lawyer in  
2 | this room knew that, neither of you did your jobs, either. I  
3 | didn't bother doing the same exercise for Gutwein, Polito,  
4 | Elmore, the other defendants, but I knew the name Michael Blot  
5 | because it's an unusual name. Now as I said, maybe the Michael  
6 | Blot who gets sued isn't the same Michael Blot who is the  
7 | defendant in this case, but maybe he is. So it seems like there  
8 | is a good-faith basis to conclude that you can't take DOCCS's  
9 | word.

10 |           You said, Ms. Panousieris, that plaintiff had a good-  
11 | faith belief that records existed. What was that good-faith  
12 | belief based on?

13 |           MS. PANOUSIERIS: Your Honor, it was the same instance  
14 | that you just stated; that I was able to find, at minimum,  
15 | Michael Blot's name on Westlaw, and also just from my experience  
16 | litigating these cases, it's ordinarily rare that no allegations  
17 | of force exist against even one officer, let alone a whole host  
18 | of officers, and so that is why I inquired as to what steps were  
19 | taken to search for these documents because I just wanted to be  
20 | clear it was not a blanket representation by one DOCCS  
21 | individual and no search hadn't actually taken place.

22 |           THE COURT: So, obviously, somebody didn't undertake  
23 | an appropriate search unless, of course, there's two Michael  
24 | Blots. But yeah, it would be pretty stunning if none of these  
25 | defendants had ever been accused of anything.

1           Now, it may be that the only central place where this  
2 information would be found -- I shouldn't say central. It may  
3 be that the only place where this information would be found  
4 would be the officer's disciplinary files or the legal  
5 department. I don't know where one would search to get this  
6 information, but it sure seems like somebody didn't do  
7 somebody's job.

8           Frankly, Ms. Zaffrann, you have been doing this work,  
9 too. I would think you would understand how rare it would be  
10 that there is not a single complaint.

11           So two things: The AG is to go back to DOCCS and tell  
12 them to do it right, and the custodian of records shall  
13 accompany the results with an affidavit describing where such  
14 records might be found, what was done to look for them,  
15 describing all the places where such records might be found,  
16 what was done to look for them, and what the results were. And  
17 that's to be done in 30 days, which is a Saturday. No, that's a  
18 Sunday, and the Monday is the Juneteenth holiday, so that's to  
19 be done by June 20th. And I'm sure somebody at DOCCS will whine  
20 about having to do that, but they invited it by their first  
21 response.

22           And if you are not satisfied, Ms. Panousieris, you can  
23 depose that person.

24           Request number nine for the disciplinary files -- oh,  
25 and, by the way, before we leave number eight regarding



1 excessive force, the -- that would only be as to the defendants  
2 other than Gutwein.

3 MS. ZAFFRANN: Your Honor, if I may, Sergeant Elmore  
4 was not excessive force. It was failure to intervene, so would  
5 that only be for Polito, Rios, and Blot?

6 THE COURT: Polito, Rios, and Blot.

7 MS. PANOUSIERIS: Your Honor, if I may, I would ask  
8 that we go ahead and get those records for Sergeant Elmore  
9 despite the fact that he is not accused of directly assaulting  
10 my client in this particular instance. I believe that prior  
11 instances of his own use of force would be relevant to the  
12 accusation that he failed to intervene and failed to report the  
13 misconduct. If he, himself has engaged in similar conduct, it  
14 goes to -- you know, the inference is that he may have aided in  
15 these officers in covering up this use of force.

16 MS. ZAFFRANN: Your Honor, if I may, that would be  
17 impermissible evidence, character evidence.

18 THE COURT: Well, I'm going to order you to turn it  
19 over, and we will see what it is, and then we will decide before  
20 trial if it's allowed under 404(b) or not.

21 MS. PANOUSIERIS: Thank you, Your Honor.

22 THE COURT: I think it has some relevance.

23 Request number nine, disciplinary files, I think that  
24 is overbroad. It should be limited to allegations relating to  
25 similar conduct or to credibility.

1 MS. PANOUSIERIS: Your Honor, if we may clarify  
2 similar conduct because I believe it's the State's position that  
3 it's only excessive force we would be looking into, but as Your  
4 Honor knows, there is also, as you said, issues of veracity,  
5 PREA allegations, due process violations, and failure to  
6 intervene. So I do think it's a bit broader than the State is  
7 making it out to be, but I'm happy to narrow it to those  
8 categories.

9 THE COURT: Yes. It did seem, Ms. Zaffrann, that you  
10 had overlooked that there does remain a due process claim  
11 against Gutwein relating to the video evidence. So as to  
12 Gutwein, it would be -- I would be surprised if there was this,  
13 but maybe there is -- relating to exclusion of exhibits at the  
14 hearing. For the others, it would be excessive force or failure  
15 to intervene, and for Polito, sexual misconduct and harm.

16 MS. ZAFFRANN: Your Honor, the failure to intervene,  
17 does that only go to Sergeant Elmore?

18 THE COURT: No. It goes to all of them because -- for  
19 the reasons Ms. Panousieris articulated.

20 Number ten, you're going to -- and number 11, has that  
21 been turned over?

22 MS. PANOUSIERIS: No, Your Honor.

23 MS. ZAFFRANN: No, Your Honor. I do not -- I do not  
24 have the medical records from DOCCS yet. I do have the mental  
25 health file. I was going to turn it over when I received all of

1 the records, both mental health and medical.

2 THE COURT: Have you gotten the stipulation, the HIPAA  
3 authorization?

4 MS. ZAFFRANN: Yes, Your Honor. I have the  
5 authorization.

6 THE COURT: So I want you to turn over the mental  
7 health now, and turn over the medical by June 20th or else -- I  
8 don't know how to sanction DOCCS -- or else whoever in charge  
9 of getting that information to the AG will have to come here in  
10 person and explain why it wasn't done. I don't want to start  
11 sanctioning money for people, and, you know, I understand they  
12 are shorthanded, but if their officers are going to keep getting  
13 sued all the time, they are going to have to put the resources  
14 into defending them.

15 MS. ZAFFRANN: I appreciate that, Your Honor. And, of  
16 course, I'm going to convey your sentiment to DOCCS very  
17 strongly, but I would note that the HIPAA authorizations were  
18 not received by my office until the very end of February. So  
19 it's --

20 THE COURT: All right. So it shouldn't take three  
21 months to put together a medical file. I mean, I don't know how  
22 they are kept, but Bureau of Prisons it's two clicks, and the  
23 medical file is produced. So I am guessing DOCCS is still in  
24 Dark Ages, but, you know, we are already almost three months out  
25 from when the authorization was done.

1           Yeah, so I understand it's not your office's doing,  
2 but like I said, if they are going to have -- if they are not  
3 going to put enough resources into defending these cases, it's  
4 going to hurt their own employees, even the ones who haven't  
5 done anything wrong.

6           All right. Number 12, I'm confused what the problem  
7 is here.

8           MS. ZAFFRANN: If I, may Your Honor? So Number 12  
9 requests for the log-ins identifying DOCCS staff, which in my  
10 response I said that if it was limited to that, that's okay, and  
11 then incarcerated individuals. And pursuant to state law, DOCCS  
12 and other agencies are prohibited from releasing information  
13 like that. So in that response I would provide --

14           THE COURT: The law says you can't disclose personal  
15 information pertaining to the incarceration of an inmate which  
16 is evaluative in nature or which could endanger the person.

17           MS. PANOUSIERIS: Your Honor, I would just point the  
18 Court to Subsection K, which allows for such disclosure in a  
19 judicial proceeding, compulsory legal process, and of course we  
20 are in federal court, and while we respect state law here, it  
21 does not control their discovery obligations, and the state -- a  
22 state law privacy exemption does not apply here, and even if it  
23 did, we have Subsection K, which allows this Court to order the  
24 disclosure of such records.

25           THE COURT: And this -- you want this because your

1 client says there are other inmates that saw what happened?

2 MS. PANOUSIERIS: Exactly, Your Honor.

3 THE COURT: And he doesn't know who they are?

4 MS. PANOUSIERIS: Some of them have been identified,  
5 and those records have been produced to the State, but he  
6 believes that there were multiple other people that potentially  
7 saw what happened, and I would at least like to inquire with  
8 these individuals, but I can't do so without knowing who was  
9 there.

10 MS. ZAFFRANN: If I may briefly, Your Honor?

11 THE COURT: Yes.

12 MS. ZAFFRANN: So if Your Honor does elect to compel  
13 DOCCS to provide that information, which I agree that by court  
14 order DOCCS can provide that information. I would just ask that  
15 the information remain confidential to this particular case  
16 because the individuals who are nonparties who do have privacy  
17 interests, they were in a special housing unit, probably for  
18 disciplinary proceedings, and that is a privacy interest that I  
19 think shouldn't go onto a public docket.

20 MS. PANOUSIERIS: I agree, Your Honor.

21 THE COURT: I think that's fair. So why don't you two  
22 confer on an order that I can sign ordering the disclosure, but  
23 providing that it's to be kept confidential and used only for  
24 this case.

25 All right. Number 15, I don't understand the debate

1 | here, either. As I understand it, the request is for the full  
2 | calculation of good-time credits, and the State only wants to  
3 | give you the records showing the effect that the discipline at  
4 | issue here had? Isn't it all the same file?

5 | MS. ZAFFRANN: Your Honor, with respect -- first off,  
6 | there's good-time credits and earned eligibility. The good-time  
7 | credits can be affected by subsequent disciplinary actions or  
8 | other things that have happened since this particular incident.

9 | With respect to the earned eligibility, that is much  
10 | greater than just good-time credits. That includes certain type  
11 | of conduct that the incarcerated person may have engaged in at  
12 | the facility that is positive, for example, getting a GED or  
13 | going to certain types of -- like completing an anger management  
14 | course, things such as that; and likewise, the earned  
15 | eligibility is something that goes -- it's different than  
16 | good-time credit.

17 | THE COURT: So what's your objection to turning over  
18 | the requested information?

19 | MS. ZAFFRANN: So my objection is that it would be  
20 | overbroad. It would be if it were limited to the -- how this  
21 | particular disciplinary sanction impacted good-time credits,  
22 | that would be okay, but there could be other things that were  
23 | impacting good-time credit outside this particular proceeding.

24 | THE COURT: Why is the inmate not allowed to know  
25 | that? Isn't that something that his counselor would go over

1 with him anyway or whatever the proper term is?

2 MS. ZAFFRANN: I think that I can inquire of DOCCS,  
3 but my understanding is that this is something that is  
4 calculated on a regular basis. It's kind of a moving target  
5 because, again, it's based on what's happening in the moment and  
6 what has been happening with respect to the incarcerated person  
7 and their sentence.

8 THE COURT: So I guess I'm wondering if at least as to  
9 the earned --

10 MS. PANOUSIERIS: Eligibility.

11 THE COURT: -- eligibility credits, conduct occurring  
12 later can affect what happens.

13 How is the plaintiff supposed to figure out the effect  
14 of this incident if the whole file isn't turned over?

15 MS. ZAFFRANN: Well, Your Honor, I think the request  
16 can be made to say -- narrowed, how did the disciplinary  
17 sanctions imposed in this case affect the good-time credits  
18 and/or the earned eligibility?

19 MS. PANOUSIERIS: Your Honor, with respect to that  
20 particular narrowing, I would object. I think that's more along  
21 the lines of an interrogatory, and Your Honor may have already  
22 looked at the State's responses to the interrogatories, but they  
23 are not responded to in full, and I would also need to rely upon  
24 the State's representation as to the effect rather than do the  
25 calculation myself.

1 THE COURT: I'm not understanding the reluctance. I  
2 mean, is there some -- is this just, you know, because it's  
3 lawyers' instincts to narrow things or is there something that  
4 you're worried about in the rest of the document?

5 MS. ZAFFRANN: I'm not sure why information related --  
6 unrelated to this action and -- but related to the good-time  
7 credit calculation should be brought into this action because  
8 the only question here is how it impacted.

9 THE COURT: Well, I agree with you, but I am asking a  
10 different question, which is: What's the concern? Like, is  
11 this private information that the prisoner is not allowed to  
12 see? Because it seems like it's something he would be entitled  
13 to anyway.

14 MS. ZAFFRANN: Well, Your Honor, he -- I don't know  
15 the answer to when DOCCS provides that type of information. I  
16 know that they do provide like conditional release dates. They  
17 do provide maximum expiration dates, parole hearing dates; that  
18 information is something that is available, and my concern is  
19 what -- what the information outside of this litigation would be  
20 used for. Would it be used for another litigation? Would it be  
21 used to say the good-time credits were not calculated properly  
22 because of something that happened in 2020?

23 THE COURT: Well, why don't we just make it subject to  
24 the same order; that it's to be used only for this case?  
25 Because it seems to me, the plaintiff doesn't have to rely on



1 DOCCS's evaluation of what the effect of this discipline was,  
2 and it seems like it could have effects down the line that are  
3 indirect. I mean -- I'm making this up -- but I could see, you  
4 know, two years after a discipline, you know, you're deciding  
5 whether to give somebody credit for some positive thing, and you  
6 take into account, well, they had a recent discipline, you know.  
7 I think it should be turned over subject to the same provision  
8 that it's to be used only for this case.

9 And don't make me regret it by -- Ms. Panousieris, by  
10 trying to bring into this case whether the calculation was  
11 right.

12 MS. PANOUSIERIS: Yes, Your Honor.

13 THE COURT: All right.

14 MS. ZAFFRANN: Your Honor, may I ask, what is the end  
15 date for that since the request just says any time after the  
16 incident, so as this is a rolling calculation, what would the  
17 end date be?

18 THE COURT: As of the day you turn it over. So number  
19 16 I think should be limited to procedures in place before the  
20 incident. What's the relevance of procedures in place after the  
21 incident?

22 MS. PANOUSIERIS: Your Honor, we typically just ask  
23 for the year before and the year after to see -- we come to this  
24 issue in depositions where the officers are referring to an  
25 older rule or a newer rule, and it helps orient me to the

1 correct rule they should have been abiding by at the instant  
2 date, and so it's kind of to use through the deposition process  
3 to orient the officer as well and use as an exhibit if  
4 necessary. I can't imagine that the year before and the year  
5 after would actually be used at trial for any purpose. It's  
6 just a discovery tool to assist with the deposition process.

7 THE COURT: Well, I think it should be limited to  
8 presenting evidence because I've dismissed the calling witnesses  
9 part.

10 MS. PANOUSIERIS: Yes, Your Honor. We have no  
11 objection to that.

12 THE COURT: I don't see how it's burdensome. So let's  
13 limit it to presenting evidence, and then otherwise that should  
14 be turned over.

15 Preservation of evidence. I understand if the -- if  
16 there is video of the incident that wasn't preserved, that's of  
17 concern to the plaintiff, but what relevance does it have to the  
18 claims against the individual defendants?

19 MS. PANOUSIERIS: Well, Your Honor, we believe that in  
20 this particular instance that defendant Gutwein, while he had  
21 custody and control over this video, he was the one who  
22 allegedly looked at it, decided it was not relevant, and then  
23 chose not to do anything with it afterward; and given the number  
24 of complaints that my client was filing with various officers  
25 and through the grievance procedure, we believe there is a

1 good-faith basis to at least inquire into what steps were taken  
2 to preserve this, if at all. It's very possible that after this  
3 information was disclosed to us, we see that there was no direct  
4 reason that Gutwein or any other defendant here had a reason to  
5 preserve the video, but without -- again, without inquiring into  
6 it, we have no way to know. So we just would like to look into  
7 that given that the video is a very central part of my client's  
8 claims.

9 THE COURT: So the -- go ahead, Ms. Zaffrann.

10 MS. ZAFFRANN: Yes. And Your Honor, we have turned  
11 over the hearing tapes, and when you look at the transcripts of  
12 the tape, I don't see where it says Mr. Gutwein looked at the  
13 videos. What he said was that the location of the videos was  
14 not where this incident occurred, and if we -- as you look at --  
15 so I'm not sure how saying Mr. Gutwein had the videos  
16 themselves, I don't think that's accurate, and I don't think the  
17 hearing transcript reflects that.

18 MS. PANOUSIERIS: If it's the State's position that  
19 defendant Gutwein didn't even look at the videos for the  
20 relevance, I will take that admission; but my understanding was  
21 that he actually looked at them and then decided that they were  
22 not relevant. My client's deposition testimony just a couple of  
23 weeks ago made clear why he asked for the certain videos that he  
24 did, and what happened in each location that may have been seen,  
25 including the SHU elevator, where my client actually during his

1 deposition testified that he lost consciousness and did not know  
2 what, if anything, the officers did to him while he was in the  
3 elevator. But he did have these injuries after this incident,  
4 and he told the hearing officer and told his assistant at the  
5 disciplinary hearing that this was the reason he wanted this  
6 video.

7 THE COURT: So --

8 MS. ZAFFRANN: Actually, Your Honor --

9 THE COURT: What Gutwein said is the use of force  
10 occurred in Location A, and these cameras are in Locations B and  
11 C, so I don't need to look at them? Is that an over-  
12 simplification, but a fair one?

13 MS. ZAFFRANN: It's -- I mean, I don't believe he did  
14 look at -- looked at the video based on the hearing and based on  
15 the hearing transcript, and I think that the videos are a little  
16 bit of a red herring because even in the hearing transcript the  
17 incarcerated individual, the plaintiff says -- admits these were  
18 not where the use of force occurred. He wanted them to show his  
19 alleged injuries, and the disciplinary hearing was whether or  
20 not the incarcerated individual assaulted a correction officer;  
21 and there is no allegation that that occurred in SHU or in the  
22 mental health unit, which is the only two places where the  
23 videos were.

24 So if the disciplinary hearing was had about the mis-  
25 conduct of -- the alleged misconduct of the correction officers,

1 that would be a completely separate process. This was a  
2 disciplinary hearing -- disciplinary hearing for whether or not  
3 plaintiff committed any violations.

4 MS. PANOUSIERIS: Well, of course, Your Honor, if  
5 plaintiff's defense in his disciplinary hearing was that he was  
6 not an aggressor and was actually attacked, it's extremely  
7 relevant to the disciplinary hearing.

8 THE COURT: Was that his defense?

9 MS. PANOUSIERIS: Yes. Absolutely. He brought up  
10 this assault during his disciplinary hearing. He made clear why  
11 he wanted these videos, and Ms. Zaffrann is referring to a part  
12 of the hearing transcript where he has described -- where my  
13 client is describing that he felt the elevator video, in  
14 particular, would have a good view of his injuries, and we  
15 learned in his deposition that the reason for this is that he  
16 lost consciousness and believes he was on the ground in the  
17 elevator, which is extremely probative of an assault on him  
18 rather than him being the aggressor on the officers.

19 THE COURT: Right, but that doesn't mean Gutwein at  
20 the hearing would have known that that's what your client was  
21 thinking.

22 Look, here is what I think should happen: There's one  
23 of two ways to do this, and I think one is way more efficient  
24 than the other. One is, turn it over now. You will depose  
25 Gutwein. If it turns out he never had them, and therefore the

1 policy is irrelevant, so be it; but if you don't turn them over,  
2 and then you depose Gutwein, and it turns out he did have them,  
3 and the policy is relevant, then you have to depose him again.  
4 So I think you should just turn it over.

5           And if you are correct that Gutwein, you know, never  
6 had the videos, I guess the policy could still be relevant in  
7 some way. Your argument would be they didn't preserve them  
8 because they knew it showed something bad?

9           MS. PANOUSIERIS: Exactly, Your Honor. And I also --  
10 I have not been able to follow up with Ms. Zaffrann yet, but her  
11 last disclosure was the maintenance records for the various  
12 surveillance cameras, and there's a few notations on there that  
13 indicate to me there's a possibility some of these cameras -- I  
14 would need to someone to explain the documents to me first --  
15 but it looks like some of these cameras may or may not have been  
16 operating that day, and I also think that's relevant. If the  
17 officers knew that they weren't operating or somehow interfered  
18 with the video, of course, those are things we want to look  
19 into, and understanding what the preservation policies are, just  
20 the bedrock foundation of those questions.

21           THE COURT: Well, you are getting Number 18.

22           MS. PANOUSIERIS: Thank you.

23           THE COURT: Let's go to Number 20. Training materials  
24 concerning rights of inmates who are being disciplined to call  
25 witnesses and present evidence. It seems to me that would be

1 relevant only to Gutwein and only to presenting evidence.

2 MS. PANOUSIERIS: Yes, Your Honor. There is no  
3 objection to that.

4 MS. ZAFFRANN: Your Honor, what would be the date  
5 limit on that?

6 THE COURT: As of the events -- in other words,  
7 whatever training he got up to the time of the hearing in this  
8 case. I don't expect him to have been clairvoyant about future  
9 training.

10 Number 22 --

11 MS. PANOUSIERIS: Your Honor, I would ask that this  
12 particular -- these training materials related to preservation,  
13 although I understand that Gutwein may have been the only person  
14 who actually had custody and control over the videos themselves,  
15 I am also interested, as I have brought up in these new  
16 disclosures that talk about which cameras were and weren't  
17 working, and there is also a notation on them that says that  
18 there is some sort of interference. Again, I don't know what it  
19 means because it's not a document I've seen before, but I am  
20 interested in the training that any of these officers would have  
21 received because, for example, if DOCCS says, you are involved  
22 in the use of force, you need to put in some sort of  
23 preservation notice, something, I just want to know that. It's  
24 highly likely that doesn't exist. I just want to know if it  
25 does.

1 MS. ZAFFRANN: Your Honor, it seems some of those  
2 questions could be resolved simply at the depositions, which we  
3 do have scheduled in mid June, and I am not quite understanding,  
4 and it's the first time I'm hearing that somehow these  
5 correction officers had access to security cameras, and that's  
6 because the maintenance is done by a third party. It's not even  
7 done by DOCCS.

8 THE COURT: Well, I don't think anybody expects the  
9 COs to -- the ones on the ground to be maintaining the videos,  
10 the cameras and all that. And some of the cameras -- I don't  
11 know about DOCCS -- but I know I have been in facilities where  
12 some of the cameras are dummies that never work because there is  
13 good reasons to make people think they work. I don't expect the  
14 COs to have information about that because part of the reason  
15 for the cameras is to watch them and the inmates.

16 But if there were a policy that said, any time you use  
17 force, you should notify sergeant so-and-so to preserve the  
18 video, and they didn't do that, that would be relevant. As  
19 Ms. Panousieris said, pretty sure there is no such policy. It  
20 would make everybody's life easier if there were, and now that  
21 I'm thinking about it, this seems like it would be a good thing  
22 for your office to try to convince DOCCS of because if there  
23 were such a policy, your job would be a lot easier because  
24 oftentimes these videos show that the inmate is full of it. And  
25 instead, the video becomes a plus for the inmate who not only



1 does it not show that the inmate is full of it, but it makes it  
2 seem a little sleazy that the officers don't have it, and -- I  
3 don't know. If I were advising them, I would tell them they  
4 should make such a rule, but I'm pretty sure this is just a  
5 phone call on your part, and they are going to say there is no  
6 such rule. So --

7 MS. ZAFFRANN: So and, Your Honor, just to be clear,  
8 the videos are at two different locations. This incident -- the  
9 alleged initial incident occurred at the housing unit, and these  
10 videos are in a completely different part of the facility, just  
11 to be clear.

12 THE COURT: Well --

13 MS. ZAFFRANN: Which I have provided that information  
14 to counselor.

15 MS. PANOUSIERIS: It's not quite accurate, Your Honor,  
16 in the sense that there was a followup that's not at issue  
17 before the Court today after plaintiff's deposition describing  
18 the incident occurring down the hallway downstairs into the  
19 elevator. So there as a followup request for those cameras as  
20 well. That's still outstanding, and it has not reached its  
21 30 days yet, and so there is not just two cameras at issue. I  
22 believe plaintiff even requested more than two. He requested  
23 three or four at his disciplinary hearing.

24 If those cameras don't exist, that is why the second  
25 set of interrogatories requested their locations and what areas

1 they would capture, which was not responded to, because this is  
2 exactly what I need to know is: What would that camera have  
3 shown, and how many of them were there? Again, to see if  
4 Gutwein looked at any of this or anyone reviewed any of it to  
5 see the veracity of Mr. Girard's allegations.

6 MS. ZAFFRANN: And, Your Honor, it was two locations I  
7 said, not two cameras. It was --

8 MS. PANOUSIERIS: I apologize.

9 MS. ZAFFRANN: -- the SHU and the mental health unit.  
10 Those were the two places where at the time of this incident  
11 there were cameras at Green Haven.

12 THE COURT: Well --

13 MS. ZAFFRANN: Not in the housing unit.

14 THE COURT: Okay. Well, if there is a policy that  
15 says you should notify someone to preserve video, and the  
16 incident was never in view of the camera, then it's not going to  
17 be relevant at trial, but we will just have to see how this  
18 shakes out. Sounds like the plaintiff thinks the incident was  
19 not confined as much as the defendants do.

20 Number 23, training regarding use of force. I think  
21 we need to just limit it as to time. We can't go back to the  
22 year one. So why don't we say previous five years, and only as  
23 to Polito, Rios, Blot, and Elmore. I'm sure this has been  
24 collected for other cases, and it doesn't sound like it would be  
25 particularly burdensome. I'm sure there is a training unit that

1 keeps all of this stuff.

2           Now, what about 24, the litigation holds? I've got to  
3 think that by the time anybody was aware that there was going to  
4 be litigation, these videos were all long gone, but correct me  
5 if I am wrong.

6           MS. ZAFFRANN: Yes, Your Honor. I can provide the  
7 privilege log with respect to communications from the attorney  
8 general's office regarding litigation hold.

9           THE COURT: All right.

10          MS. PANOUSIERIS: Your Honor, I would just ask that  
11 that also extends to DOCCS counsel, and it -- I'm happy to  
12 receive a privilege log because it will have those dates -- if  
13 it's a proper privilege log, it will have the dates of those  
14 communications, and I don't need to see their contents in order  
15 to establish when the communications were made.

16          THE COURT: All right. Now I'm saying June 20th for  
17 all of this. When are the depositions scheduled for?

18          MS. ZAFFRANN: June 13th, 14th and 15th.

19          THE COURT: So maybe I should say a little sooner.

20          MS. PANOUSIERIS: Well, I would love that, Your Honor.  
21 Of course, I would prefer to have, at a minimum, the  
22 disciplinary records and the policies because those are going to  
23 be directly relevant to my questions. They are the most  
24 important to me for the depositions, but I'm happy to have  
25 everything sooner rather than later, understanding that DOCCS

1 takes a little time to get things turned over.

2 THE COURT: Well, the disciplinary records and the  
3 policies, why don't we say June 10th, and the rest June 20th,  
4 and you can spend the weekend studying them.

5 MS. PANOUSIERIS: Yes, Your Honor. I will.

6 THE COURT: All right. And let me refresh my memory  
7 on what our schedule is. We have a conference July 11th. All  
8 right.

9 Anything else we should do this morning?

10 MS. PANOUSIERIS: Yes, Your Honor. I would just ask  
11 the Court to also make a ruling on the state of the  
12 interrogatories of both sets. That was mentioned at the end of  
13 my letter. It's the plaintiff's position that they just are not  
14 adequately responded to at all, and I would like full responses  
15 that to each of the interrogatories in set one and set two, and  
16 the reason I didn't break them down is because I think it's  
17 plain on their face that they are insufficient. If you just  
18 take a look at the responses, they refer me to other documents.  
19 They are not actually full written responses, which is what are  
20 required. For example, the first interrogatory on set two asks  
21 for the descriptions of the locations of the cameras at issue  
22 and what areas they capture, and the response was just that I  
23 would get a policy when we get a protective order, and it's not  
24 clear to me how the policy itself would respond to that  
25 interrogatory in full. And it's my position that even if it

1 | did, the State must actually respond to the interrogatory as to  
2 | the individuals defendants, rather.

3 |           MS. ZAFFRANN: Your Honor, I looked at the deficiency  
4 | letter, and we had actually gone over many of the inter-  
5 | rogatories, and it's a little surprising because when the second  
6 | set of interrogatories, when we discussed it, we agreed that  
7 | there would be a confidentiality agreement, which I have  
8 | provided, but counsel has not signed and has not responded to  
9 | me. She's provided a response. I called her and emailed her to  
10 | discuss it further, but I didn't get a response yet. And my  
11 | understanding was that we didn't have a problem with the second  
12 | set of interrogatories. Once the directive and policy was  
13 | produced, that that may respond to many of the inquiries, and I  
14 | did respond that there are two locations where the cameras were  
15 | at the facility on the day of the incident: The special housing  
16 | unit and the mental hygiene unit, and that the mental hygiene  
17 | unit was not a recording surveillance, but it was just for  
18 | observation of incarcerated persons that are in the mental  
19 | hygiene unit.

20 |           THE COURT: So what more do you need?

21 |           MS. PANOUSIERIS: Well, Your Honor, again, there is a  
22 | followup that's outstanding that's about -- to kind of expand on  
23 | those cameras, and I am trying to understand what those cameras  
24 | would have actually captured. Is it cells? Is it the walkway?  
25 | Where were they pointed, and where are they located within the

1 unit? So while I appreciate acknowledgment of their existence,  
2 it's not quite what the interrogatory was getting at.

3 And as to our prior conversation, I did represent to  
4 Ms. Zaffrann that I was happy to look at the policies to see  
5 what it resolved, but it's still my contention that both sets of  
6 interrogatories are incredibly deficient in that they don't  
7 actually respond. And I am more than happy to discuss the  
8 protective order. I was out of the office the day that  
9 Ms. Zaffrann called me. I've got it with me today. We have a  
10 small dispute on some of the contents of it.

11 THE COURT: We'll talk about it right as soon as we  
12 are done.

13 MS. PANOUSIERIS: Exactly. I am happy to talk about  
14 it today when we're finished.

15 THE COURT: So I am looking at the answer to request  
16 nine. It says the cameras depicted the general areas within  
17 those specialized units. I think they can probably be a little  
18 more specific than that. You know, are we talking about: Do  
19 they show the bubble? Do they show individual cells? Do they  
20 show -- I don't know what the SHU has besides individual cells,  
21 if anything. And the mental health unit, it doesn't -- I don't  
22 think you need to provide that detail because there is no  
23 recording, but for the SHU, just give a little more detail.  
24 The --

25 MS. ZAFFRANN: Your Honor, if I may, I can certainly



1 do that. I, myself haven't seen the directive that was being  
2 requested here because DOCCS hasn't provided it to me without a  
3 confidentiality agreement. So once I receive it, it may answer  
4 some of these questions, which is what I had told plaintiff's  
5 counsel.

6 THE COURT: Okay.

7 MS. ZAFFRANN: And so we will hope that it turns out  
8 to be a big nothing.

9 MS. PANOUSIERIS: And I am happy to do that with the  
10 second set, Your Honor. I would like to go over the first set  
11 as well. It's my understanding from our prior meet-and-confers  
12 is that the defendants did not intend to elaborate more than  
13 they have in their amended responses, which I believe was  
14 Exhibit F to my letter. And if Your Honor could just take a  
15 quick look at those, you will see I did appreciate that when  
16 Ms. Zaffrann reproduced them, she expanded on some of her  
17 objections.

18 THE COURT: I just want to --

19 MS. PANOUSIERIS: Yes, no problem.

20 THE COURT: I don't have exhibits numbers. I have ECF  
21 number --

22 MS. PANOUSIERIS: It's 94-6.

23 THE COURT: 94-6 is the --

24 MS. PANOUSIERIS: Is the amended responses to the  
25 document requests -- first set of document requests and



1 interrogatories. The interrogatories begin on page 7 of 94-6.

2 THE COURT: I only have three pages of 94-6. Hold on.  
3 I need to -- for some reason -- oh, wait. I do have it. 94-6,  
4 page 7. Okay. So and where were the corresponding requests?

5 MS. PANOUSIERIS: I'm sorry?

6 THE COURT: Where are the corresponding requests?

7 MS. PANOUSIERIS: They begin on -- they are at 94-1,  
8 beginning on page 12.

9 THE COURT: Okay. And are you complaining about all  
10 of them?

11 MS. PANOUSIERIS: Well, Your Honor, not the identify  
12 the name, not the first few that are just asking for  
13 descriptions of -- or identify names. I take counsel's word  
14 that her initial disclosures were comprehensive other than one  
15 followup email, which is not before the Court today. I asked  
16 for one additional person's identity. Let me just -- I lost my  
17 page. One second.

18 MS. ZAFFRANN: Your Honor, if I may, I'm -- this is  
19 kind of confusing to me because we did a meet-and-confer  
20 telephonically on the first interrogatories in March. I amended  
21 consistent with what I believed were our agreements, and the  
22 only request was to provide more specificity within the  
23 documents as to where the responses were located, which I did by  
24 March 31st. I don't see anything in the letter. Can you tell  
25 me, direct me to your letter where you are talking about the

1 deficiencies?

2 MS. PANOUSIERIS: I just mentioned in the final  
3 paragraph of my letter, and as I stated before, I did not  
4 enumerate these because I think that they are deficient on their  
5 face, which was conveyed during our last two conversations and  
6 in various emails.

7 And so it's my understanding that an interrogatory --  
8 that the federal rules require that an interrogatory be  
9 responded to in full, not just a reference to a document. That  
10 would be what the document request is for, and I do appreciate  
11 Ms. Zaffrann's updated document request, which point me to the  
12 proper documents. But for interrogatories, it's a bit  
13 different, and there is a bit more of a responsibility to answer  
14 in full, not just point me to documents.

15 So that's what I am looking for. I'm looking for  
16 actually sufficient responses under the federal rules.

17 MS. ZAFFRANN: And, Your Honor, again, this was  
18 provided at the end of March. There was no additional  
19 discussions about the alleged deficiencies in the amended  
20 responses. My understanding is that if the information is  
21 contained in the document, and I highlight where that  
22 information is, that is sufficient.

23 THE COURT: Yeah. I mean, look, like I'm looking at  
24 number four: Identify every instance where any of the  
25 defendants have been disciplined. Okay. That's too broad, and

1 | you are going to get their disciplinary files. So I don't think  
2 | they have to write out a list of the things that are going to be  
3 | in their disciplinary files. That's just busywork.

4 |         Number five, every civil case where they've testified.  
5 | Again, I think it's overbroad, but you're going to get  
6 | information about every case where they've been sued, and you  
7 | can take it from there. Same with six.

8 |         So, you know -- let's see, number seven. Anybody you  
9 | think may have been a witness. Eight -- I mean, look, if there  
10 | is actually something substantive that you think you are missing  
11 | because they didn't write out the answer, that's one thing;  
12 | but -- which is why I've directed more detail regarding  
13 | interrogatory number nine. But, you know, if you are going to  
14 | get their disciplinary file, I don't think they have to  
15 | summarize it for you in an interrogatory.

16 |         MS. PANOUSIERIS: And I'm fine with that, Your Honor.

17 |         THE COURT: It's not a good use of anybody's time,  
18 | and --

19 |         MS. PANOUSIERIS: I guess it was unclear to me if all  
20 | of this information that I am seeking would be contained within  
21 | the disciplinary file, but if it is, and it resolves what I am  
22 | looking for, I'm happy to just use those records.

23 |         THE COURT: Obviously, to the extent your reference to  
24 | a document doesn't fully answer the question, you would have to  
25 | add more; but to the extent it does, you don't.

1 All right. I was glad to see, by the way,  
2 Ms. Zaffrann, that the federal bar counsel -- we can go off the  
3 record.

4 (Discussion off the record)

5 THE COURT: All right. Back on the record.

6 I'm certainly going to ask you at the next conference  
7 about settlement, and maybe I'm imagining it, but I have found  
8 DOCCS of late more amenable to settlement, but usually only  
9 in -- well, I shouldn't say usually only in *pro se* cases because  
10 I think it's rare that I have one of these cases that's not *pro*  
11 *se*, but they have been coming up with, you know, a few thousand  
12 bucks for *pro se* plaintiffs. Once attorney's fees come into the  
13 picture, it's a little harder. But I will certainly ask you,  
14 and if we are going to have motions, we will have motions.

15 Anything else we should do this morning?

16 MS. ZAFFRANN: No. That's it, Your Honor. Thank you.

17 MS. PANOUSIERIS: That's it, Your Honor. Thank you.

18 THE COURT: All right. Walter, can they have the room  
19 if they want to work on a protective order?

20 THE DEPUTY CLERK: Sure.

21 THE COURT: Okay.

22 MS. ZAFFRANN: I'm sorry. One last thing. I  
23 anticipate that we are going to be filing an attorney-eyes-only  
24 confidentiality agreement with respect to the policies or  
25 directives about the video cameras.



1 THE COURT: That's all right with you, right,  
2 Ms. Panousieris?

3 MS. PANOUSIERIS: Yes. And if it becomes an issue, we  
4 will approach the Court, but I have no problem with them being  
5 produced under a designation.

6 THE COURT: Okay. Good. All right. Have a good  
7 weekend, everyone.

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